

**IN THE HIGH COURT OF UTTARAKHAD, AT
NAINITAL.**

Criminal Appeal No. 326/2001

(Old No. 2893 of 1985)

R.P. Chaturvedi S/o A.N. Chaturvedi,
R/o 280/33 Kha, Blunt Square,
Lucknow, present address C/o Station
Superintendent, N.Rly. Narwana,
District Jind

.....Appellant.

Versus

State of U.P. Respondent.

Shri S.K. Agarwal, Senior Advocate, assisted by Sri S.S. Bhandari,
Learned counsel for the appellant.

Sri Arvind Vashit, learned standing Counsel for State/C.B.I.

Dated: November 15, 2007

Hon'ble B.C. Kandpal,J.

This Criminal Appeal has been preferred against the judgment and order dated 16-10-85 passed by special Judge, Anti-Corruption, U.P. (East), Dehradun in C.B.I. Case No. 10 of 1983, whereby the accused/appellant was convicted U/Ss 409 I.P.C. and was sentenced to undergo R.I. for a term of one year and to pay a fine of Rs. 300/- and in default of payment of fine to further undergo S.I. for one month. He was further held guilty and convicted U/S 5(2) read with section 5(1)(c) of the Prevention of Corruption Act and was sentence to undergo R.I. for a period of one year.

2. Brief facts of the case are that accused/appellant R.P. Chaturvedi was posted as booking Clerk at Shamli Railway Station, Northern Railway in the years 1982. He issued four Quarterly Season Ticket (for short Q.S.T.) to four different persons. In three transaction he accounted for lesser

amounts than charged by him by writing shorter distances in the Daily Trains Cast Book and in monthly Q.S.T. Return, while in the fourth case he did not account for the entire sum of Rs. 55-00 which he had realized from the passenger Sri Raj Singh on having issued a Q.S.T. The Accused realized a total sum of Rs. 225/- out of the four transaction but he accounted for a sum of Rs. 78/- only and thereby he had misappropriated a sum of Rs. 147/-. The investigation of this case was entrusted to Sri H.S. Bisht who had charge sheeted the accused U/S 409 and Section 5(2) read with Section 5(1)(C) of the prevention of Corruption Act.

3. The accused pleaded not guilty and denied the charges. He however, admitted having prepared the Q.S.T., Ex. Ka.1, Ka.2 and Ka.4 As regards Q.S.T. Ext. ka.40, he has stated that he has neither issued the Q.S.T. nor realized its amount of Rs. 55/-.

4. The prosecution, in support its case has examined 15 witnesses. Out of these P.W.1 is Raj Singh, P.W.2 Mahavir Singh. P.W.3, Salek Chandra Sharma, P.W.4, Raj Kumar, P.W.5, Ram Prakash, P.W.6, Roshan Lal, P.W.7, Ramdhan Singh, P.W.8, Shiv Raj Singh, P.W.9, Pooran Singh Verma, P.W.10, Sri Dharamveer Singh Tomar, P.W.11, V.G.S. Bhatnagar, P.W. 12 G.S. Negi, P.W.13, H.C. Bisht the I.O., P.W. 14 Sukahram and P.W. 15 Som Dutt.

5. No evidence was adduced in defence by the accused.

6. The Special Judge, Anti-Corruption after having gone through the evidence on record and hearing learned counsel for the parties, found the accused/appellant guilty U/S/ 409 I.P.C. and 5(2) read with Section 5(1)(c) of the prevention of Corruption Act and accordingly sentenced him.

7. Being aggrieved the accused has preferred this appeal before this Court.

8. I have heard the learned counsel for the parties and have gone through the record.

9- According to the prosecution case the accused has prepared Q.S.Ts. Ext Ka.1, Ks. 2 and Ka.4. This fact is also admitted to the accused/appellant. However, he denied having received their amounts of Rs. 60/, Rs. 55/- and Rs. 60/-respectively. As regards the Q.S.T. Ext. Ka.40, the allegation of prosecution is that this was also prepared by the accused and received its amount. But the accused has denied that he issued the said Q.S.T. and received its amount. Therefore, there are four transactions in question.

10- As regards Q.S.T. Ext. Ka. 40 the allegation of the prosecution is that on 6.2.1982 this Q.S.T. was prepared by the accused and issued in the name of Sri Roshan Lal on receipt of its prescribed fare of Rs. 50/-. Sri Roshan Lal has been examined as P.W.6. He has testified that on 6.2.1982 he had paid Rs. 50/- to Sri R.P. Chaturvedi who was on duty on the ticket counter and asked him for a Q.S.T. for Kashimpur Kheri. This witness has testified that after preparation of Q.S.T. the accused

put his signatures thereto. He has identified the handwriting and signatures of the accused. In his cross-examination this witness has alleged that he had known Sri R.K. Chaturvedy very well. No suggestion has been given to this witness from defence side as to why he will be telling lie. P.W.3, Salek Chandra Sharma, who was the Railway Station Master of Shamli Railway Station has proved the signatures of the accused and as per the entries of attendance register, Ext. 1 he deposed that the accused was on duty on 6.2.1982 and 7.2.1982. It is noteworthy that the signatures of the accused were sent for expert opinion and Sri V.G.S. Bhatnagar P.W.11, handwriting expert has opined that the disputed signatures on Ext. Ka. 40 were made by the person who has written the specimen handwriting. Therefore, it is amply proved that the accused had prepared the Q.S.T. Ext. Ka.40 and received Rs. 50/- from Sri Roshan Lal and he accounted for Rs. 20/- but misappropriated the balance amount of Rs. 30/-

11- So far as the Q.S.Ts. Ext. Ka.1, Ka.2 and Ka.4, are concerned, Q.S.T. Ext. Ka.1 was issued in the name of P.W.2 Mahavir Singh and this fact has been clearly admitted by the accused. He however denied having received Rs. 60/- from Sri Mahavir Singh. Sri Mahavir Singh was won-over by the accused and that was the reason that he denied to have paid this amount to the accused/appellant. Although in his examination-in-chief this witness has specifically stated that he had paid Rs. 60/- to the accused, but in the cross-examination he resiled from his statement by saying that he had given the money to some other booking clerk. The trial court has rightly not accepted this version of the witness,

firstly on the ground that the Q.S.T. was prepared by the accused which fact is acceptable to him and secondly that when the Q.S.T. was prepared by the accused then why some other person would receive its amount. It is relevant to mention that the entries Ext. Ka. 37 and Ka. 37/1 in D.T.C. Book are in the hand writing of the accused. Therefore, it is also proved that the accused prepared the Q.S.T. Ext. Ka.1 and received Rs. 60/- from Mahavir Singh and made entries in D.T.C. Book but he accounted for Rs. 33/- only thereby misappropriated Rs. 27/-. The handwriting expert has also proved the disputed handwriting to be of the person who has given the specimen writing.

12- Likewise the accused prepared Q.S.T. Ext. Ka.2 and received Rs. 55/- from Sri Raj Singh but he did not account at all the said money. Although he has denied to have received the amount but P.W.1, Sri Raj Singh has specifically deposed that he had paid Rs. 55/- to the accused who had issued the Q.S.T. under his writing and signatures. P.W.3 Salek Chandra Sharma has proved that the amount of this Q.S.T. has neither been accounted for in the Q.S.T. Register nor in D.T.C. Book. This witness further proved that on 21.4.982 the accused was alone on duty on the ticket window.

13- As regard Q.S.T. Ext. Ka.4 admitted the accused has prepared this Q.S.T. but he denied to have received Rs. 60/-. P.W.10, Dharamveer Singh Tomar is the holder of this Q.S.T. This witness has deposed that he got this Q.S.T. prepared on 7.4.1982 of payment of Rs. 60/- to the accused. The accused accounted for Rs. 25/- only and thereby

misappropriated Rs. 35/- out of the amount of Rs. 60/- received under Q.S.T. Ext. Ka.4 The handwriting expert has also opined that the writing and signatures on the Q.S.T. in question were made by the person who has sent the specimen writings.

14- In view of above discussion, I find that the prosecution has been able to establish its case that the accused/appellant in the capacity of booking clerk at Shamli Railway Station prepared Q.S.T. Exts. Ka.1, Ka.2, Ka.4 and Ka.40 and received Rs. 60/-, Rs. 55/-, Rs. 60/- and Rs. 50/- as per Q.S.Ts., but he did deposit Rs. 27/-, Rs.55/-, Rs. 35/- and Rs. 30/- respectively and thereby misappropriated the amount of Rs.147/-. I do not find any illegality and impropriety in the impugned judgment and order passed by the trial Court.

15- So far as the quantum of sentence is concerned, learned defence counsel has submitted that the amount misappropriated by the accused/appellant is a meager amount, the accused/appellant is still in service and he has already deposited the amount with the department long back. It was also contended that the incident pertains to the year 1982, the accused/appellant remained in jail for some days therefore, in the interest of justice the accused appellant be sentenced to the period of already undergone and to a suitable fine.

16- I find substance in the submission raised by the learned counsel for the appellant.

17- Thus the appeal is liable to be dismissed. However, as far as the sentence part is concerned, the Court is of the view that the occurrence in this case is of 1982 and the money involved in the case is only a meager amount of Rs. 147/- which has been deposited by the appellant in the year 1983 and this fact has not been rebutted by the learned counsel for the C.B.I. The appellant is still in service which indicates that the department has not taken any action against the appellant on account of remittance of money. Under the aforesaid circumstances, I think it would be just and proper that instead of sending him to jail, he be sentenced to the period already undergone and suitable fine be imposed.

18- Accordingly, the appeal is dismissed. The judgment and order passed by the trial court convicting the appellant is upheld. However, the sentences awarded to the accused/appellant are modified to the extent that the accused/appellant is sentenced under both the counts, i.e. U/S 409 I.P.C. and Section 5(2) read with Section 5(1)(C) of Prevention of Corruption Act, to the period already undergone by him, and a fine of Rs. 10,000/- instead of Rs. 500/-. In default of payment of fine, he shall undergo R.I. for one year. The impugned judgment and order accordingly stands modified.

19- Let the record be transmitted to the trial court for compliance.

(B.C.Kandpal, J.)